IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8058 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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GSRTC THROUGH DIVISIONAL CONTROLLER

Versus

PJ VANKAR,

Appearance:

1. Special Civil Application No. 8058 of 2000

MR UI VYAS for Petitioner No. 1

RULE SERVED for Respondent No. 1

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 30/04/2002

ORAL JUDGEMENT

Heard learned advocate Mr.U.I.Vyas appearing on behalf of the petitioner Corporation.

The petitioner Corporation has challenged the award passed by the Industrial Tribunal, Ahmedabad in

Reference No.229 / 1991 dated 8th October, 1999 wherein the tribunal has set aside the punishment order of stoppage of two increments and granted benefits thereof with effect from 20th July, 1992.

Notice of RULE was issued this Court and granted interim relief on 24th July, 2000. Though notice of Rule has been served on the respondent but the respondent has not remained present in this proceeding, nor any advocate seems to have engaged by the respondent workman and therefore, this petition is finally heard even in absence of the respondent workman.

Learned advocate Mr.Vyas for petitioner Corporation has submitted that the tribunal has committed gross error in setting aside the punishment order of stoppage of two increments with cumulative effect. Mr.Vyas, learned advocate has further submitted that when the misconduct of negligence is found to have proved, in that case, the tribunal ought to have imposed some punishment and therefore, interference by the Tribunal was not called for and therefore, the tribunal has committed gross error in setting aside the punishment order of stoppage of two increments. Learned advocate Mr.Vyas also submits that the tribunal has committed error in coming to the conclusion that finding is perverse and baseless and the tribunal has also not considered the past record of the respondent workman though it was produced before the tribunal. Therefore, according to Mr.Vyas, the tribunal has committed gross error in setting aside the punishment order.

I have considered submissions made by learned advocate Mr.Vyas on behalf of the petitioner Corporation. The respondent workman was working as Conductor who challenged the order of punishment of stoppage of two increments with cumulative effect before the Tribunal. The allegation made against the respondent workman that on 26th May, 1987 when he was on route from Palanpur to Siddhpur, his bus was checked near Ladajipura and as per the report made against the workman, from two passengers of one group travelling from Nonaadga to Ladajipura , though fare of Rs.1.50 was collected, tickets were not issued. On the basis of the said allegation, chargesheet was served and after completion of departmental inquiry, punishment of stoppage of two increments was imposed with permanent effect on the respondent by the competent authority. However, the defence of the respondent workman was that he was doing road booking and at the relevant time, young child of one passenger was all of sudden fallen sick and therefore, he required to start

the bus while carrying out road booking and therefore, said two passengers were found without tickets. That it was not his malafide intention to misappropriate the money of the corporation. Thereafter, the tribunal has examined the merits of the matter and ultimately, the tribunal has come to the conclusion that in departmental inquiry, the reporter was not able to give answer how the amount was collected from the passengers. The tribunal has also considered the oral evidence led in departmental inquiry, wherein the competent authority has come to the conclusion that in all three misconduct found to have proved. But thereafter, the tribunal has examined the evidence led in the departmental inquiry and come to the conclusion that finding which has been given by the competent authority, is baseless and perverse as no serious misconduct seems to have committed by the respondent workman. However, it is also observed by the tribunal that on the contrary the workman has helped the passenger when a young child was sick and started the bus while carrying out road booking and this act cannot be said to be serious misconduct warranting punishment of stoppage of two increments with cumulative effect. Therefore, considering all these aspects, the tribunal has in terms come to the conclusion that finding is baseless and perverse ant ultimately, the tribunal has set aside the punishment order and granted arrears with effect from 20th July, 1992 and not granted from the date of punishment order. Learned advocate Mr.Vyas for petitioner has submitted that past record has been ignored by the tribunal. But so far this contention is concerned, in view of this Court, when charge is not proved and finding is declared vitiated, in that case, the re is no need to consider the past record of the respondent workman. Past record is relevant when misconduct is found to be proved and the same requires to be considered in support of the punishment to be imposed by the Corporation but in case, finding is declared vitiated, baseless and perverse, there is no need to consider the past record against the respondent workman. Therefore, the tribunal has rightly appreciated the evidence on record while coming to the conclusion that finding is baseless and perverse.

In above view of the matter, according to my opinion, the tribunal has not committed any error which, in any way not call for interference of this Court while exercising the powers under Article 226 and 227 of the Constitution. Therefore, there is no substance in this petition which requires to be rejected. Learned advocate Mr.Vyas fails to prove any other infirmity in the award under challenge nor pointed out any jurisdictional error

or procedural irregularity committed by the labour court and therefore , there is no substance in this petition and the same is rejected accordingly.

Rule discharged. Interim relief, if any, stands vacated. No order as to costs.

Date : 30-4-2002 [H. K. Rathod, J.]

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